

ASSEMBLY BILL

No. 1123

Introduced by Assembly Member Davis

February 27, 2009

An act to amend Sections 22351.5 and 22358 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1123, as introduced, Davis. Professions and vocations: process servers: registration.

Existing law, the violation of which is a crime, requires specified natural persons, corporations, and partnerships to register, in the county in which they reside or in which their principal place of business is located, a certificate of registration as a process server. Existing law also requires a registrant, upon initial filing, to submit to a fingerprint check to verify that the registrant has not been convicted of a felony, and specifies procedures for revoking or suspending a certificate of registration, including that a hearing shall be conducted by an administrative law judge.

This bill would require a registrant to submit to the fingerprint check also upon renewal of a lapsed certificate of registration, and would specify that a hearing be conducted by the presiding judge of the superior court. Because the bill would impose additional requirements on process servers, the violation of which would be a crime, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22351.5 of the Business and Professions
2 Code is amended to read:

3 22351.5. (a) At the time of filing ~~the~~ *an* initial certificate of
4 registration *or renewing a certificate of registration that has lapsed*,
5 the registrant shall also submit a completed Request for Live Scan
6 form confirming fingerprint submission to the Department of
7 Justice and the Federal Bureau of Investigation, in order to verify
8 that the registrant has not been convicted of a felony. The clerk
9 shall utilize the Subsequent Arrest Notification Contract provided
10 by the Department of Justice for notifications subsequent to the
11 initial certificate of registration.

12 (b) If, after receiving the results of the Request for Live Scan,
13 the clerk is advised that the registrant has been convicted of a
14 felony, the presiding judge of the superior court of the county in
15 which the certificate of registration is maintained is authorized to
16 review the criminal record and, unless the registrant is able to
17 produce a copy of a certificate of rehabilitation, expungement, or
18 pardon, as specified in paragraph (2) of subdivision (a) of Section
19 22351, notify the registrant that the registration is revoked. An
20 order to show cause for contempt may be issued and served upon
21 any person who fails to surrender a registered process server
22 identification card after a notice of revocation.

23 SEC. 2. Section 22358 of the Business and Professions Code
24 is amended to read:

25 22358. (a) A certificate of registration may be revoked or
26 suspended whenever it has been determined that the registrant has
27 made a service of process, including service completed by an
28 employee or independent contractor of the registrant, which does
29 not comply with the provisions of law governing the service of
30 process in this state or constitutes an improper service of process
31 not amounting to a violation of law.

32 (b) An investigation concerning the revocation or suspension
33 of a certificate of registration may be commenced at any time at

1 the option of the county clerk if the county clerk deems it to be
2 appropriate. A complaint by any person who has alleged that he
3 or she has been injured by a service of process shall be investigated
4 by the public prosecutor. The investigation shall determine if the
5 registrant complied with the provisions of law governing the
6 service of process or constituted improper service of process not
7 amounting to a violation of the law.

8 (c) If the public prosecutor determines from the investigation
9 that cause may exist for the suspension or revocation of the
10 certificate of registration, he or she shall set the matter for hearing
11 and give notice to the registrant. That hearing shall be conducted
12 ~~in accordance with Chapter 5 (commencing with Section 11500)~~
13 ~~of Division 3 of Title 2 of the Government Code except that the~~
14 ~~decision of the administrative law judge shall be final. For the~~
15 ~~purposes of those provisions, the public prosecutor shall be deemed~~
16 ~~to be the agency by the presiding judge of the superior court.~~

17 (d) If, after the hearing, the county clerk is notified after the
18 decision has become effective that the ~~administrative law~~ *superior*
19 *court* judge has directed that the registrant's certificate be
20 suspended or revoked, the county clerk shall forthwith suspend or
21 revoke the certificate. If the certificate is revoked, the bond or cash
22 deposit required by Section 22353 shall be forfeited to the county
23 treasury subject to the right of a person to recover against the bond
24 or cash deposit under Section 22357.

25 SEC. 3. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.